

Appl. No. 09/782,650  
Amdt. dated December 29, 2003  
Amendment under 37 CFR 1.116 Expedited Procedure  
Examining Group

PATENT

### REMARKS/ARGUMENTS

#### Status of the Claims

Claims 1-7 and 28-35 are pending and presented herein for examination. Claim 6 is amended.

#### Grounds for Rejection of the Claims

Claims 1-7 and 28-35 stand rejected on various grounds:

Claim 6 stands rejected as allegedly indefinite pursuant to 35 U.S.C. §112, 2nd paragraph..

Claims 1-4, 6, 7 and 28-29 stand rejected as allegedly anticipated pursuant to 35 U.S.C. §102(e) in light of Rusholati et al. (U.S. Patent No. 6,303,573).

Claims 1-7, and 28-35 stand rejected as allegedly unpatentable pursuant to 35 U.S.C. §103/§102(e) over Rusholati et al. (U.S. Patent No. 6,303,573) and in view of Olofsson et al. (PNAS 93(6):2576-81 (1996)).

Applicants respond to the above rejections below.

#### Listing of Cited Art on PTO Form 892

Applicants thank the Examiner for signing off on the Supplemental Information Disclosure Statement. The Olofsson et al. reference cited by the Examiner was not previously of record in the application and has not been listed on PTO Form 892. Applicants respectfully request that the cited Rusholati et al. and Olofsson et al. references (copy enclosed) be listed on a PTO Form 892 (Notice of References Cited) so that these reference will both appear on the face sheet of any patent to issue and also be marked to indicate that they were cited during examination.

Support for the Amendment to the Claims.

Claim 6 has been amended to recite: "The chimeric molecule of claim 1, wherein the fusion protein is linked to the targeting peptide by a peptide bond." Support for the "peptide bond" subject matter is found *inter alia* in the specification at p. 12, line 18 (in the third paragraph on p. 12 which defines the term "fusion protein").

In view of the above, Applicants believe the amendments to the claims add no new matter and respectfully request their entry.

Response to the Rejection of Claim 6 for Indefiniteness under 35 U.S.C. §112, 2nd paragraph.

Applicants have amended claim 6 to recite the subject matter of a "peptide bond". Applicants believe the amendment renders moot the instant grounds for rejection. In view thereof, Applicants respectfully request that the grounds for rejection be reconsidered and withdrawn.

Response to the Rejection of Claims 1-4, 6, 7 and 28-29 under 35 U.S.C. §102(e) over the Rusholati et al. reference.

The Rusholati et al. reference (U.S. Patent No. 6,303,573) is not prior art under 35 U.S.C. §102(e). Section 102(e) recites:

(e) the invention was described in – (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, ...

The Rusholati et al. patent has an earliest priority date of June 7, 1999. The present application claims priority benefit of U.S. Patent Application No. 09/327,045 which was filed on June 7, 1999. The Rusholati et al. patent was not filed before the earliest priority date of the present application and therefore does not qualify as prior art.

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Response to the Rejection of Claims 1-7 and 28-35 under 35 U.S.C. §103 in view of Rusholati et al. (U.S. Patent No. 6,303,573) and Olofsson (PNAS 93(6):2576-81 (1996)).

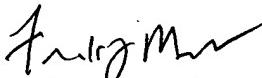
As noted above, the Rusholati et al. patent was not filed before the present application and is thus not available as prior art under 35 U.S.C. §102(e) and not available for use under the combined operation of 35 U.S.C. §102(e) and 35 U.S.C. §103. In view thereof, Applicants request that the above grounds for rejection be reconsidered and withdrawn.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,



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